

PT 97-43

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

BETHEL APOSTOLIC CHURCH)		
OF CHICAGO)	Docket #	95-16-306
Applicant)		
)	Parcel Index #	16-16-110-034
v.)		
)		
THE DEPARTMENT OF REVENUE)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Armand L. Andre, attorney for Bethel Apostolic Church of Chicago.

Synopsis:

The hearing in this matter was held at 100 West Randolph, Chicago, Illinois, on April 4, 1997, to determine whether or not Cook County parcel numbered 16-16-110-034 qualified for exemption during the 1995 assessment year.

Chester Lamar, church clerk for Bethel Apostolic Church of Chicago, (hereinafter referred to as the "Applicant"), was present and testified on its behalf.

The issues in this matter include first, whether the applicant was the owner of the parcel during the 1995 assessment year. The second issue is whether the applicant is a religious organization. The last issue is whether the parcel was used by the applicant for exempt purposes during the taxable year in question. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned the parcel during 1995. It is also determined that the applicant is a religious organization. Finally, it is

determined that the applicant did not use the parcel for exempt purposes during the assessment year in question.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter the "Department"), that Cook County parcel index number 16-16-110-034 did not qualify for a property tax exemption for the 1995 assessment year, was established by the admission into evidence of Department's Exhibits 1 through 5.

2. The applicant acquired this property by a warranty deed dated November 4, 1994. (Dept Ex. No. 1; Tr. p. 11)

3. I take administrative notice that the applicant was found to be a religious organization and granted a partial exemption, after a hearing, in docket number 89-16-269 which concerned Cook County parcel index numbers 16-09-212-039-000, 16-09-212-040-000 and 16-09-212-041-000. (Dept. Ex. No. 5; Tr. pp. 18-19)

4. The parcel in question is improved with a two story brick building with a basement and garage. (Dept. Ex. No. 1; Tr. p. 12)

5. The first floor of the building was rented by the applicant to a private individual for \$500.00 or \$550.00 per month. That portion of the property is not at issue. (Dept. Ex. No. 1; Tr. pp. 4, 17)

6. The second floor of the building was used by the applicant to house "saints" or people that visit the applicant. (Tr. p. 12)

7. "Saints" are members of the applicant or members of other churches that might visit the applicant. (Tr. p. 12)

8. During 1995, the garage was either vacant or used to store items of the prior owner. (Tr. pp. 19-20)

9. The first floor tenant uses the basement for laundry purposes. (Tr. p. 15)

Conclusions of Law:

Article IX §6 of the Illinois Constitution of 1970 provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to the Constitutional authority, the legislature has exempted certain property from taxation. In particular, 35 **ILCS** 200/15-40, states as follows:

§ 15-40. All property used exclusively for religious purposes, or used exclusively for school and religious purposes, ... and not leased or otherwise used with a view to profit, is exempt, ...

In this case, the applicant does not dispute the fact that the first floor was leased for profit and is not in exempt use. Therefore, the only issue before me is the use of the second floor, basement, garage and proportionate property.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts and debatable questions resolved in favor of taxation. People Ex. Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968)

The case law in this area is clear; property used by a religious organization for residential purposes, other than as a parsonage, is clearly not exempt. See Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill.App.3d 420 (2 Dist. 1987) [Denying an exemption for the residence of a maintenance man]; Benedictine Sisters of Sacred Heart v. Department of Revenue, 155 Ill.App.3d 325 (2 Dist. 1987) [Denial of an exemption for a caretaker's residence]; St. John Evangelical Lutheran Congregation v. Board of Appeals of Cook County, 357 Ill. 39 (1934) [Denial of an exemption for a residence owned by a church and used by a teacher at a parochial school].

In The People v. Deutsche Gemeinde, 249 Ill. 132 (1911), the Illinois Supreme Court stated:

Unless facts are stated from which it can be seen that the use is religious or a school use in the sense in which the term is used in

the constitution the application should be denied. The words used in the constitution are to be taken in their ordinary acceptation and under the rule of strict construction, which excludes all purposes not within the contemplation of the framers of that instrument. While religion, in its broadest sense, includes all forms and phases of belief in existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State it means the formal recognition of God as members of societies and associations. As applied to the uses of property, a religious purpose means a use of such property by a religious society or body of persons as a stated place for public worship, Sunday schools and religious instruction.

Based upon the statutes, case law, and facts presented, I find that the applicant leased the first floor of the building on the property in question for profit. I also find that the second floor and other areas were used for residential purposes, which is not an exempt use. I therefore recommend that Cook County parcel index number 16-16-110-034 remain on the tax rolls for 1995 and be assessed to the applicant.

Respectfully Submitted,

Barbara S. Rowe
June 17, 1997